

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

STATE OF TEXAS et al. ,
Plaintiff,

v.
UNITED STATES OF AMERICA et al.,
Defendant.

Civil Action No. 18-cv-068 (ASH)

AFFIRMATION IN SUPPORT OF MOTION TO INTERVENE UNDER FRcvP RULE

24 BY THE TRUSTEES OF THE AD HOC NEW YORKER REPUBLICAN

COMMITTEE

Exhibit 4

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TIMES HERALD-RECORD

Judge clears way for undocumented immigrants to get NY driver's license

By Jon Campbell / Gannett New York

Posted Dec 13, 2019 at 5:59 PM

ALBANY — A federal judge on Friday cleared the way for New York to begin offering driver's licenses to undocumented immigrants next week, dismissing a challenge from a Republican county clerk.

In a 17-page decision, U.S. District Judge Gary Sharpe ruled Rensselaer County Clerk Frank Merola didn't have legal capacity to sue the state over the law, tossing his lawsuit without ruling on the merits of New York's soon-to-take-effect law allowing immigrants to seek driving privileges.

Merola's lawsuit was the last chance for opponents of the law to block it before Department of Motor Vehicles offices across the state open Monday, the first day they will accept applications after the law takes effect Saturday.

At least three other lawsuits remain pending or are on appeal, but they won't be decided before Monday.

Sharpe's decision was handed down the same day 27 county clerks across New York signed on to a push to delay the implementation of the law, known as the Green Light Law.

The clerks, who are all from counties that run their own DMVs, accused the state DMV of failing to put in place rules that adequately protect against people concealing their true identity when seeking a license.

The Green Light Law allows immigrants to use foreign-issued documents to prove their identity and age, leading some clerks to question how they will be able to discern whether such documents are legitimate.

"Because of these lax regulations, implementation of the State law at this time would create unacceptable security risks as the loopholes allow for nefarious people to obtain a New York State Standard Driver Licenses and use it to commit bank fraud, identity theft, credit card fraud, human trafficking, and other criminal activities," the clerks wrote.

Among the county clerks who signed on to the effort were Joseph Mihalko of Broome, Michael Bartolotti of Putnam and Michael Kearns of Erie, who is leading a separate federal lawsuit challenging the law.

A separate federal judge dismissed Kearns' lawsuit last month; he is appealing.

In a statement, state DMV spokeswoman Lisa Koumjian said county clerks can't pick and choose which laws to enforce.

"If a clerk is unwilling to follow state law, he or she should resign their office," she said.

Sharpe's ruling Friday found Merola didn't convincingly argue that he can sue the state as a municipal officer.

The judge cited a previous federal court ruling that found New York's municipalities are "subdivisions" of the state, which means municipal officers can't sue the state in most cases unless they are being required to violate the constitution.

Merola argued that he was being forced to violate a constitutional ban on allowing non-citizens to vote, but Sharpe found the Green Light Law does not require Merola to register non-citizens to vote.

While the law allows driving privileges, an undocumented immigrant would have to explicitly lie about their voting eligibility — which would open them to a felony charge — in order to try and register to vote through their driver's license application.

"For all of these reasons, Merola cannot demonstrate that he has capacity to sue under the constitutional proscription exception, and dismissal is required," Sharpe wrote.